

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	
Opportunities of Spectrum through Incentive	)	Docket No. 12-268
Auctions	)	
	)	

**COMMENTS OF  
UNITED COMMUNICATIONS CORPORATION**

United Communications Corporation (“UCC”) is the licensee of Class A eligible low power television (“LPTV”) station WNYF-LD, Massena, New York, Fac. ID 16744 (the “Station”). UCC, by its attorneys, hereby submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission in the above-referenced proceeding.<sup>1</sup>

The proposals in the NPRM would severely curtail the opportunities of licensees of Class A eligible LPTV stations to participate in the proposed incentive auctions, receive full value for their stations in the incentive auction and/or operate in the repacked television spectrum band

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<sup>1</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Notice of Proposed Rulemaking (rel. Oct. 2, 2012) (“NPRM”). UCC, as licensee of WWNY-TV, Carthage, New York, Fac. Id No. 68851, also submitted joint comments in this proceeding with American Broadcasting Companies, Inc., licensee of WABC-TV, New York, New York, Fac. Id No. 1328; WBNG License, Inc., licensee of WBNG-TV, Binghamton, New York, Fac. Id No. 23337; and WXXA-TV LLC, licensee of WXXA-TV, Albany, New York, Fac. Id No. 11970. Those comments stress the importance of providing interference protection to the facilities constructed pursuant to interference agreements entered into prior to passage of the Middle Class Tax Relief and Job Creation Act of 2012 (the “Spectrum Act”). These agreements were intended to enable such stations to replicate their former over-the-air analog viewing areas, and as such should be respected by the Commission in any spectrum repacking proceedings. However, in the instant set of comments, UCC limits itself to issues facing licensees of LPTV stations who have applications pending to convert such facilities to Class A stations.

post-incentive auctions. It would be very unwise for the Commission to take such actions as such steps would trample on the public interest inherent in the unique service provided by WNYF-LD. Moreover, the proposed actions would unjustly deprive such licensees of their rights to operate their stations or at least receive full value for them.

UCC has pending before the Commission an application to convert the licensed facilities of WNYF-LD to Class A facilities. See FCC File No. BLTTA-20010129AAU (the “Class A Application”). The Class A Application has been pending for nearly twelve years due to circumstances beyond the control of UCC. The Class A Application was submitted to the Commission by the original licensee, Smith Television of New York, Inc. (“Smith Television”). At that time, the station in question was known by call sign W28BC. Within a few days of that submission, Smith assigned the license for the Station to a subsidiary, Watertown Television Corporation (“WTC”). UCC was a minority stockholder in WTC from that time until December 11, 2001, when it acquired positive control of WTC from Smith Television. UCC became the owner of W28BC (now identified as Station WNYF-LD) in its own right on December 31, 2001, pursuant to prior Commission approval of the merger of WTC into UCC (see File No. BALTTL-20011212ABD). UCC spent over two million dollars on this acquisition (including that of sister station WNYF-CA [formerly WNYF-LP], Watertown, New York, Fac. ID 16743), and thereafter invested additional millions of dollars to secure cable television access for and upgrades to these stations. The Station eventually converted to digital operation, and transferred its operations from Channel 28 to Channel 18 in order to avoid interference to a new digital allotment on Channel 28. See BLDTL-20101118ALZ.

It should be noted that the Station is the only commercial television facility (low power or full power) licensed to a community in Saint Lawrence County, New York and originating

programming there.<sup>2</sup> St. Lawrence County is the largest county in New York geographically. It is home to approximately 120,000 people living in communities like Massena, Potsdam, Ogdensburg and Canton, as well as the surrounding rural area. Even though the County is remote from major population centers, the needs of the citizens of St. Lawrence County are no less real than those of residents of Albany or New York City. The Station thus provides an important local service.

The Class A Application was pending due to the Informal Objection (the “Objection”) submitted against the application on February 12, 2001 by Anthony DiMarco (a/k/a Anthony DiMarcantonio). The stations Mr. DiMarco was associated with went dark after his passing in 2005 and have never returned to the air. See <http://en.wikipedia.org/wiki/WLOT-LP>. The licenses for the stations are defunct. Thus, there is no longer any human being or licensee to stand behind the Objection.

Mr. DiMarco filed a similar objection against the application (File No. BLTTA-20010129AAT) for a Class A license for WTC’s sister station WNYF-CA, which is licensed to Watertown, New York, which is approximately 90 miles southwest of Massena. Mr. DiMarco, as a resident of Watertown, arguably had standing to protest the Class A application of the Watertown station. However, given that he was not a resident of Massena or of any part of the Station’s coverage area, he had no such standing to object to the Class A Application of the Massena station.

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<sup>2</sup> Station WWNY-TV reaches most of St. Lawrence County, but is licensed to Watertown, New York, in Jefferson County and does not provide a Grade A signal to much of St. Lawrence County. Further, the need for service by WNYF-LD is greatest in the northern party of the County, where the signal of WNYF-LD is strongest. The programming of these two stations is substantially different and they are affiliated with different networks.

Over ten years ago, the Video Division denied Mr. DiMarco's objection against the Class A application for WNYF-CA. See Letter dated September 19, 2002, from Hossein Hashemzadeh, Associate Chief, Video Division, Media Bureau to Mr. DiMarco and counsel for WNYF-CA. Specifically, the Division found that Mr. DiMarco's objection to the Watertown Class A application was not "supported by evidence or the affidavit of a person with personal knowledge of the facts alleged" as required in order for the Commission to take an objection of this nature seriously.

As with the Watertown case, the Objection filed by Mr. DiMarco against the Class A Application is not worthy of consideration by the Commission. As demonstrated in UCC's Opposition, filed January 17, 2003, Mr. DiMarco's Objection is not only unsworn, but unverified. For the Commission to give credence to objections that fail so miserably to comply with basic procedural requirements would be to savage the integrity of those requirements, and encourage careless objectors to ignore them. Beyond that, the allegations contained therein were incorrect.

UCC and its predecessors have spent substantially more than a decade of time and hundreds of thousands of dollars complying with the Class A requirements applicable to the Station, including maintenance of studio facilities in the Massena/Potsdam area. It would be a travesty if the licensee's service to the community were lost as the result of actions by the Commission in this proceeding.

Recently, the Commission's staff requested that UCC amend the Class A Application to renew the certification of the qualifications of UCC and the Station for Class A status as set forth in the application, and that amendment was filed with the agency. Adding to the certification provided by Smith Television in the original Application, UCC certified that the Station has

broadcast: (a) a minimum of 18 hours per day; and (b) an average of at least 3 hours per week of programming each quarter produced within the market area served by the Station. Additionally, UCC certified that the Station complied with the station operating requirements set forth in subparts H and J of Part 73 of the Commission's rules that are applicable to Class A stations. Thus, everything is in place for a grant of the long-pending Class A application.

**THE COMMISSION'S PROPOSAL TO LIMIT THE ABILITY OF CERTAIN CLASS A  
ELIGIBLE LICENSEES TO PARTICIPATE IN THE INCENTIVE AUCTION IS  
FUNDAMENTALLY UNFAIR**

The Commission proposals in the NPRM would prohibit Class A eligible stations whose applications for Class A status were pending as of the date of enactment of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (the "Spectrum Act") from participating in the reverse auction or protecting these Class A eligible stations' service areas in the spectrum repacking process. See NPRM, paras. 77, 79 and 98. This is fundamentally unfair to licensees such as UCC that have patiently waited for years for the Commission to remove the clouds on their pending Class A status applications. These licensees have operated their stations as Class A facilities for more than a decade - at considerable expense - only now to have their plans and hopes for the stations seemingly dashed by the proposal to remove these stations from the spectrum consolidation process.

The Commission does recognize that Class A licensees are in a unique situation due to the fact that many of them have not completed their transition to full digital operation as they were not required to do so prior to the enactment of the Spectrum Act. UCC supports the Commission's proposal to evaluate the bid of Class A licensee in the reverse auction based upon the status of its licensed digital facility on the date of commencement of the reverse auction process. See NPRM, para. 80. However, the Commission should expand this consideration

offered to those who held Class A licenses on February 22, 2012, to include those whose Class A status applications were pending as of that date, and were granted prior to the date of commencement of the reverse auction.

This reasoning would also apply to the Commission's proposal to preserve the coverage area and population served of only full power and Class A television stations in the repacking process. Class A eligible licensees must be considered as Class A licensees for this purpose. Such stations are no less worth than those who held pending applications for licenses to cover authorized facilities as of February 22, 2012, which the Commission proposes to protect. See NPRM, para. 98. This is particularly true because the Commission proposes to protect facilities authorized in unbuilt construction permits for new full power television stations as of February 22, 2012, and prospective digital Class A facilities. See NPRM, para. 115. It would be galling and nonsensical to omit Class A eligible stations with pending Class A status application on the Spectrum Act enactment date if these unbuilt stations were protected. The Commission itself notes that it would be "fundamentally unfair" to exclude prospective digital Class A licensees and "would deprive the public of important benefits of the Class A digital transition." Such reasoning absolutely applies to those with pending Class A status applications such as UCC.

Finally, as noted above, the Station serves as the only local over the air broadcast television station for viewers in St. Lawrence County. This rural area of northern New York State is a unique area that would be sorely lacking in emergency information and other services if WNYF-LD was forced to cease operation. As the Commission noted, the creation of "white" or "gray" areas is strongly disfavored. See NPRM, para. 48. The Commission should take all steps possible to prevent the creation of white or gray areas through the spectrum repacking process.

## CONCLUSION

Based upon the Commission's own reasoning, it would be would be arbitrary and capricious for the Commission to omit licensees of stations such as WNYF-LD from the reverse auction and protecting such stations in the repacking process. UCC has operated WNYF-LD as a Class A station for over a decade. Moreover, the proposal in the NPRM fails to recognize the significance of the public service provided by these stations. In the case of WNYF-LD, for many residents of rural northern New York, this is the *only* local off-air commercial television service available. The Commission has a long line of cases holding that a loss of service is prima facie contrary to the public interest. That principle applies *a fortiori* where, as here, elimination of the subject service would create television "white area."

Accordingly, the Commission must include such stations in its plans for the future of television broadcasting. It is imperative that the agency provide adequate protection for such stations in the rules proposed in the NPRM, not only for the sake of fairness to those licensees, but more importantly in order to maintain the unique service to the public that such stations provide.

Respectfully submitted,

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